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CHAMBER THREE

WARD NO. ITL 75-412/415-3

CASE NO. 412

ZAMAN AZAR NOURAFCHAN,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

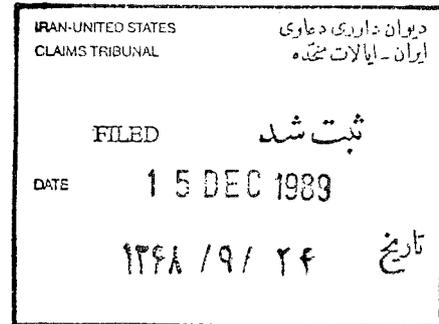
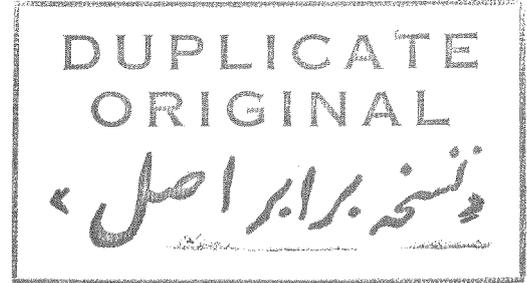
CASE NO. 415

GEORGE NOURAFCHAN,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

INTERLOCUTORY AWARD



I. PROCEEDINGS

1. On 18 January 1982 ZAMAN AZAR NOURAFCHAN¹ (Case No. 412) and GEORGE NOURAFCHAN (Case No. 415) (collectively the "Claimants") each submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran") for the alleged expropriation in late 1980 of real property in Iran. Each claimed U.S.\$4,795,765 as the value of an undivided one-twenty-fourth share in the same two properties. Subsequently, the amount sought by each increased to U.S.\$7,917,313.63.² On 3 January 1983 Iran submitted a Statement of Defense in each Case.

2. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. 251, 265, in which it determined that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States."

3. On 28 June 1985 the Tribunal requested the Claimants to submit all written evidence they wished the Tribunal to consider in determining their dominant and effective nationalities. On 30 August 1985 the Claimants submitted their memoranda and evidence. The Tribunal thereafter invited Iran to file "all evidence that it wishes the Tribunal to

¹The documents submitted by the Parties such as the Claimant's birth certificate, Iranian identity card and American passport bear the name "Zaman Azar Nourafchan," not "Azar Zaman Nourafchan" as referred to in the Statement of Claim and in the subsequent submissions of the Claimant.

²The Amended Statement of Claim submitted by George Nourafchan also makes reference to the sum of "not less than \$7,943,980.29."

consider on the issue of Claimant[s'] nationalit[ies]." After granting three extensions of the original deadline, the Tribunal on 6 February 1987 denied Iran's fourth request for extension and informed the Parties that it intended to proceed with its deliberations on the issue of jurisdiction in these Cases as soon as its schedule permitted on the basis of the evidence then before the Tribunal, pursuant to Article 28, paragraph 3, of the Tribunal Rules.

4. On 25 November and 13 December 1988 Iran submitted memorials on the issue of the nationality of Zaman Azar Nourafchan and George Nourafchan, respectively, asserting in each Case that the dominant and effective nationality of the Claimant is Iranian.

5. By its Order of 26 May 1989 the Tribunal requested George Nourafchan to submit the original or copy of his certificate of naturalization. The requested submission was received on 26 June 1989.

II. ZAMAN AZAR NOURAFCHAN

A. Factual Background

6. Zaman Azar Nourafchan was born to Iranian parents on 12 December 1957 in Santa Monica, California. Her birth was registered with the Iranian Consulate in New York City on 17 February 1958. On the same day she was issued an Iranian identity card. Six months after her birth she left the United States with her parents for Iran where she spent her childhood and received her elementary and secondary education. In December 1975 Zaman Azar Nourafchan obtained a United States passport from the United States Embassy in Tehran. At the same time she also was issued an Iranian passport. On 11 December 1975 Zaman Azar Nourafchan left Iran and returned to the United States.

7. Upon her arrival in the United States, she stayed with relatives in southern California. In 1976 and 1977 she attended English and mathematics classes at the University of California at Los Angeles. She states that after returning to the United States in 1975 she travelled to Iran only once to visit her parents for three weeks in April 1977. During that visit she also applied for the renewal of her Iranian passport. In March 1979 she graduated from the Control Data Institute in Los Angeles. Thereafter she obtained work as a computer operator in the Los Angeles office of a Pennsylvania corporation where she worked until June 1982. Subsequently, she took a position as a trainee in computer programming for Santa Monica Bank.

8. Zaman Azar Nourafchan asserts that soon after her arrival in the United States she opened a bank account with a California bank and thereafter maintained a personal checking account and took out a loan with other California banks. She states that she registered to vote and voted regularly in United States elections since 1976. She also states that since her arrival in the United States she has actively participated in the religious and social activities of her community in Los Angeles.

9. Zaman Azar Nourafchan alleges that except for the allegedly expropriated property in Iran she owned no property outside of the United States.

10. Iran states that Zaman Azar Nourafchan, having spent her entire childhood and youth in Iran, first applied for an Iranian passport in December 1975 and left Iran for a short trip abroad. After apparently obtaining approval of the Iranian Ministry of Science and Higher Education, Zaman Azar Nourafchan left Iran for the United States in 1976 for the purpose of continuing her higher education. For this reason, Iran argues, she was granted the renewal of her

Iranian passport in Iran in April 1977, together with a student's exit permit.

B. The Tribunal's Determination

11. The Tribunal has first to determine whether Zaman Azar Nourafchan was, from the time her claim arose until 19 January 1981, a national of the United States or of Iran or of both countries. If the Tribunal concludes that she holds both nationalities, it will have to determine which one is "dominant and effective" during the relevant time and, consequently, must prevail for purposes of jurisdiction over the present proceedings. Case No. A18, Decision No. DEC 32-A18-FT, p. 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265.

12. It is undisputed that Zaman Azar Nourafchan is an Iranian national by virtue of her parents' nationality. At the same time, however, due to her birth in the United States she is a United States citizen under United States law. Zaman Azar Nourafchan thus holds nationality of both Iran and the United States.

13. The pertinent issue thus becomes one of determining her dominant and effective nationality at the relevant time. In its decision in Case No. A18, supra, the Tribunal noted that the determination of a claimant's dominant and effective nationality requires consideration of "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Id. In this Chamber's decision in Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), the Tribunal held that "the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the

reality and the sincerity of the choice of national allegiance he [or she] claims to have made, are relevant."

14. Although she was born in the United States, Zaman Azar Nourafchan spent her childhood and adolescent years in Iran where she lived with her Iranian parents and attended Iranian schools. So far as can be judged from the record, she fully participated in Iranian society. She states, however, that upon reaching the age of eighteen she chose to leave Iran for the United States and to exercise her rights as a United States citizen. She further states that, upon her arrival in the United States, she lived with her brother, and that since that time she has not been to Iran except for a short visit in 1977. Zaman Azar Nourafchan also states that all her immediate family and relatives are in California and that, since her parents moved to the United States in 1978, she has no close family or friends left in Iran.

15. It is clear from the record that, since her arrival in the United States in 1975, Zaman Azar Nourafchan's residence, family life, education and employment have been in the United States. These factors, considered together with her evident lack of contacts with Iran, brought about a shift of her interests from Iran towards the United States and American society. At the time her claim is alleged to have arisen, her family ties, her personal, social and economic life, as well as her public duties as a citizen, were centered in California. These factors evidence her integration into American society and leave little doubt as to her national allegiance. From the mid-1970s, and throughout the relevant period, her attachment to the country of her birth predominated over her ties with Iran.

16. Accordingly, the Tribunal concludes that the dominant and effective nationality of Zaman Azar Nourafchan during the relevant period is that of the United States.

III. GEORGE NOURAFCHAN

A. Factual Background

17. George Nourafchan was born on 23 October 1951 in Milan, Italy to Iranian parents. He was issued an Iranian identity card by the Iranian Embassy in Rome on 1 October 1953. George Nourafchan was educated in French schools in Italy. He states that his primary languages as a child were Italian and French but that he also learned to speak colloquial Persian. He alleges that he also learned English in summer school in Los Angeles where he spent the summers of 1968 and 1969, when he stayed with his brothers who had previously emigrated to the United States, and that English is now his primary language. Following graduation from high school in Italy, he went to the United States, arriving in Los Angeles on 10 September 1970.

18. He first attended the University of California and received a bachelor of arts degree in physiology from the University of California at Berkeley in 1974. Then he attended two years of medical school in Mexico, but after his mother died in Los Angeles in 1977 he returned to California. Upon his return to California he joined the real estate business of his brothers in southern California.

19. In 1972, having received a draft notice from the Italian army, he renounced his Italian citizenship.

20. On 12 November 1973 he was granted permanent resident status in the United States. He was naturalized as a United States citizen on 19 September 1980.

21. George Nourafchan states that since his arrival in the United States southern California has been the center of his business, social and personal affairs and that he has paid federal and state taxes in the United States. He further

asserts that he has owned no property outside the United States except for the allegedly expropriated property in Iran. He states that he performed volunteer work for United States political campaigns and that, upon his naturalization, he registered to vote and has voted regularly in federal and state elections in the United States.

22. George Nourafchan further states that he has been in Iran only twice to see his relatives, once when he was eight years old and once in 1972. He asserts that all of his immediate family and most of his other relatives have been living in southern California and that he has no immediate family or close friends in Iran.

23. Iran argues that the fact that George Nourafchan was born and resided in Italy instead of Iran has little bearing on his Iranian nationality, which he has possessed, due to his Iranian parents, throughout his life. Iran further argues that after he renounced his Italian nationality in 1972 he remained exclusively an Iranian national until the date of his naturalization as a United States citizen on 19 September 1980. Thus Iran asserts George Nourafchan's status as a dual Iran-United States national existed for less than ninety days up to 19 January 1981. Iran argues that under these circumstances his Iranian nationality, held by him for nearly thirty years at that time, predominates over his United States nationality.

B. The Tribunal's Determination

24. By virtue of his parents' Iranian nationality, George Nourafchan is considered under Iranian law to be a national of Iran. At the same time, however, he is a United States citizen by virtue of his naturalization on 19 September 1980. He thus holds nationality of both Iran and the United States.

25. The pertinent issue thus becomes one of determining George Nourafchan's dominant and effective nationality. In its decision in Case No. A18, supra, the Tribunal held that it has jurisdiction over claims of dual Iran-United States nationals as long as the dominant and effective nationality of the claimant during the period from the date the claim arose until 19 January 1981 was that of the United States. As noted above, George Nourafchan did not become a United States citizen until 19 September 1980. Therefore, any claim which arose before that date would be outside the Tribunal's jurisdiction.

26. George Nourafchan states, inter alia, that the property alleged to have been expropriated was subject to a law passed on 27 June 1979 ordering the nationalization of undeveloped land at some future time unless developed by the owners. He also states that there was no official pronouncement of confiscation immediately afterwards. He alleges, however, that by the end of 1980 a government-authorized confiscation had occurred.

27. Iran denies that George Nourafchan's property was expropriated by the "Act to Abrogate Ownership of Never Utilized Urban Lands" of 27 June 1979 or by any other subsequent measure of Iran. If it is determined, however, that his property was expropriated prior to his naturalization, Iran asserts that the Tribunal would not have jurisdiction over the claim since at that time he was not a United States national and thus the claim would not have been continuously owned by a United States national from the time it arose as required by the Claims Settlement Declaration.

28. The Tribunal finds that the issue of the date on which the claim arose has not yet been fully briefed by the Parties and, therefore, is not ripe for decision. Consequently, the Tribunal joins this issue to the merits. The

Tribunal, however, reserves its right to decide upon its jurisdiction in relation to this date on the basis of written evidence to be submitted by the Parties, if it deems it appropriate. In the present Interlocutory Award the Tribunal confines itself to the determination of the dominant and effective nationality of George Nourafchan during the period from 19 September 1980 to 19 January 1981 on the hypothesis that his claim arose during this period without prejudice to its future decision on this point.

29. Turning now to the question so delimited, the Tribunal notes that George Nourafchan's allegations as to the main facts of his life have not been seriously disputed by Iran. Considering that there are no other reasons in this case to doubt their veracity, the Tribunal deems that it can rely on them.

30. The Tribunal must now proceed to apply the standards previously articulated in this Award (see supra para. 13) to the facts before it. The record establishes that George Nourafchan was not born in Iran and has never resided there. His ties with Iran existed solely through his Iranian parents. Such circumstances, unless parents make substantial efforts to ensure that contact with the country and culture of their origin is maintained, will undoubtedly contribute to a loosening of the child's ties with that country and culture. George Nourafchan attended French schools in Italy. His parents took him to Iran once for a brief family visit when he was eight years old. They also, however, maintained contacts with his relatives in the United States, where he spent several months during his school vacations attending English courses. In 1970, at the age of nineteen, George Nourafchan left Italy for the United States. His renunciation of Italian nationality in 1972 indicates that he had no intention to live in Italy again. By the time he was granted permanent resident status in the United States in 1973, he was not only occupied with his

study at the University of California but also was involved in the real estate business of his brothers. By 1977 George Nourafchan was engaged in the real estate business on a full-time basis. In 1978 he joined his brothers, Parvis and Richard Nourafchan, in a general partnership, PRG Investment West, based in Los Angeles. By the time of his naturalization as a United States citizen in September 1980, George Nourafchan had fully established himself in the real estate business in California. Throughout the period of his residence in the United States, except for one short trip to Iran in 1972, he had no contacts with Iran.

31. The Tribunal notes that, since he settled in the United States in 1970, his residence, education, professional and business life as well as family and social life were concentrated in the United States. He also participated in public life and exercised his rights as a United States resident and later as a citizen. These factors indicate that, by the time of his naturalization in 1980 as a United States citizen, his ties with the country of his choice were well established and he was fully integrated into American society. Thus, his acquisition of United States nationality in 1980 merely constituted a formal act endorsing his prior decision, taken some years previously, to become a national of the United States.

32. For the reasons set forth above the Tribunal finds that, upon his naturalization on 19 September 1980, the dominant and effective nationality of George Nourafchan was that of the United States.

IV. AWARD

33. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. For the purpose of the Tribunal's jurisdiction, the dominant and effective nationality of the Claimant ZAMAN AZAR NOURAFCHAN is that of the United States.
- b. For the purpose of the Tribunal's jurisdiction, the dominant and effective nationality of the Claimant GEORGE NOURAFCHAN, as of the date of his naturalization, 19 September 1980, to 19 January 1981, is that of the United States. The issue regarding the date on which his claim arose is joined to the merits of the Case.
- c. The schedule for submission of memorials and evidence on all remaining issues will be established by a separate order.

Dated, The Hague
15 December 1989

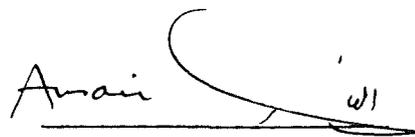


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God



Richard C. Allison



Parviz Ansari Moin
Dissenting Opinion